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Site Evaluation Committee

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April 15, 2016

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**Re: Application of Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") for a Certificate of Site and Facility for the Construction of a New 115 kV Transmission Line from Madbury Substation to Portsmouth Substation
SEC Docket No. 2015-04**

Dear Agency Officials:

On April 12, 2016, Eversource filed an Application for a Certificate of Site and Facility (Application) for the siting, construction and operation of a new 115 kV electric transmission line. A hard copy and an electronic copy of the Application were delivered to those agencies with specific permitting authority. If your agency did not receive a copy, or requires another copy, please contact me directly. An electronic copy of the Application will also be available on the SEC website, <http://www.nhsec.nh.gov/projects/2015-04/index.htm>.

Please note that pursuant to RSA 162-H:7-a, I, state agencies having permitting or other regulatory authority may participate in Committee proceedings by (i) receiving proposals or permit requests; (ii) determining completeness of elements required for agency's permitting or other programs and reporting on such issues to the Committee; (iii) reviewing proposals or permit requests and submitting recommended draft permit terms and conditions to the Committee; (iv) identifying issues of concern on the proposal or permit request or notifying the Committee that the application raises no issues of concern; and (v) designating one or more witnesses to appear before the committee at a hearing to provide input and answer questions of parties and Committee members. RSA 162-H:7-a, VI, provides that a state agency may also intervene as a party in any committee proceeding in the same manner as other persons under RSA 541-A.

Pursuant to RSA 162-H:7, IV, I am requesting that your agency, as an agency with a permitting or other regulatory authority over the Project, conduct a preliminary review of the Application and respond in writing to me **prior to May 13, 2016**, as to whether or not the Application contains sufficient information to satisfy the application requirements for your agency to consider the issuance of permits, conditions or licenses, if any, under the jurisdiction of your agency pursuant to either state or federal law. If the Application does not contain sufficient information for this purpose, please advise me, in writing, as to what additional information is necessary.

For your convenience I have attached pages 12-16 from the Application. On these pages the Applicant lists the agencies with permitting and other regulatory authority and identifies permits and licenses that it asserts are required for the proposed Project. If you believe that the Application requires a permit from your agency that is not included on the list, please contact me as soon as possible.

I look forward to your response. If you have any questions please feel free to contact me via e-mail at Pamela.monroe@sec.nh.gov or 271-2435.

Sincerely,



Pamela G. Monroe
Administrator
NH Site Evaluation Committee

Ec: Barry Needleman, Esq., McLane Middleton
Adam Dumville, Esq., McLane Middleton
Christopher J. Allwarden, Esq., PSNH d/b/a Eversource
Elizabeth Maldonado, Esq, Northern Pass Transmission, LLC
Michael Iacopino, Esq., Brennan, Lenehan

Attachment: Pages 12-16 of the Application

- (7) Evidence that the applicant has a current or conditional right of access to private property within the boundaries of the proposed energy facility site sufficient to accommodate a site visit by the committee, which private property, with respect to energy transmission pipelines under the jurisdiction of the Federal Energy Regulatory Commission, may be limited to the proposed locations of all above-ground structures and a representative sample of the proposed locations of underground structures or facilities.

The Project is located along numerous public roads and in public places where the Committee and any other member of the public has the right to access or view the Project's proposed location in a sufficient manner so as to accommodate a site visit. Members of the Committee are able to see the ROW, therefore, for this Project, there is not any specific need to access private property. Please also see the Pre-Filed Testimony of James Jiottis.

- (d) Each application shall include information about other required applications and permits as follows:

- (1) Identification of all other federal and state government agencies having permitting or other regulatory authority, under federal or state law, to regulate any aspect of the construction or operation of the proposed energy facility;

RSA 162-H:7, IV provides that "[e]ach application shall contain sufficient information to satisfy the application requirements of each state agency having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, and shall include each agency's completed application forms."⁹ The statute thus requires an Applicant to submit information that satisfies the application requirements of the "state agencies having permitting or other regulatory authority."¹⁰ The Applicant acknowledges that under Site 301.03(d) the SEC may require the filing of additional information relative to other agencies and other aspects of regulation and regulatory compliance under its rulemaking authority. However, as discussed below, the Applicant submits that the statute limits the agencies that may make agency-specific completeness determinations to those state agencies that make final decisions.

Pursuant to the statute, each state agency having permitting or other such regulatory authority must determine if an Application contains "sufficient information for its purposes" to make a final decision.¹¹ Accordingly, the Applicant believes that only those state agencies that make a final decision by issuing a permit, order or decision within the time limits established in RSA 162-H:7, IV-c, may participate in making a completeness determination under the statute. Those state agencies include NHDES, NHPUC, and New Hampshire Department of Transportation ("NHDOT").

⁹ RSA 162-H:7, IV.

¹⁰ *Id.*

¹¹ *Id.*

An agency's purpose under the statute must be read in the context of its other requirements under the statute, namely, those that require an agency having permitting or other regulatory authority to report its progress to the SEC within 150 days and to make a final decision within 240 days.¹² This position is consistent with the fundamental goal of resolving all issues in an integrated fashion, as set forth in RSA 162-H:1. Moreover, the statute recognizes that agencies having permitting or other such regulatory authority over a project comprise only those agencies that may dictate terms and conditions in a permit or decision, or deny a necessary approval altogether.¹³

The Applicant's view is further reinforced by the recent amendments to RSA 162-H, specifically, the addition of RSA 162-H:7-a, which recognizes the two basic ways in which state agencies may participate in SEC proceedings, i.e., as an agency that makes a final decision, or as an agency that takes a position on how the SEC should make a particular finding.

a. Federal Agencies

- US Army Corps of Engineers (USACE) (Clean Water Act, 33 U.S.C. § 1344 *et. seq.*, relative to wetland protection as addressed through the New Hampshire Programmatic General Permit; Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. § 403 *et seq.*; and National Historic Preservation Act, 16 U.S.C. § 470);
- US Environmental Protection Agency (USEPA) (Clean Water Act, 33 U.S.C. § 1251 *et. seq.*, relative to the National Pollutant Discharge Elimination System (NPDES) Construction General Permit);
- Federal Aviation Administration (FAA) (14 C.F.R. § 77.9 relative to the preservation of navigable airspace, an air obstruction determination under FAA Regulation Part 77.9(b) is required);¹⁴
- US Fish and Wildlife Service (USFWS) (Endangered Species Act of 1973, 16 U.S.C. § 1531, *et. seq.*, relative to protection of federally-listed threatened and endangered species as addressed under the New Hampshire Programmatic General Permit);¹⁵ and
- National Marine Fisheries Service (NMFS) (Endangered Species Act of 1973, 16 U.S.C. § 1531, *et. seq.*, relative to protection of federally-listed threatened and endangered species; and Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, *et. seq.*, to promote conservation of marine fishery resources).

¹² RSA 162-H:7, VI-b and VI-c.

¹³ RSA 162-H:16, I.

¹⁴ The Applicant will submit FAA Form 7460-1, Notice of Proposed Construction or Alteration, to the FAA at least 45 days before commencing construction.

¹⁵ The USFWS results letter is included in Appendix 37 Rare, Threatened and Endangered Species and Exemplary Natural Communities Report

b. State Agencies**1. State Agencies That Make An Agency Completeness Determination**

- NH Department of Environmental Services (NHDES), Water Division, Wetlands Bureau (RSA Ch. 482-A, relative to dredge and fill in wetlands as addressed under the NHDES Wetlands Permit Application);
- NHDES, Water Division, Alteration of Terrain (AoT) Bureau (RSA 485-A:17, relative to surface water runoff from land disturbance as addressed under the NHDES Alteration of Terrain Permit Application);
- NHDES, Water Division, Watershed Management Bureau (Clean Water Act, 33 U.S.C. § 1341 *et. seq.*, related to state certification that the USACE permit complies with state water quality standards (see Application for Water Quality Certification in Appendix 14);
- NHDES, Water Division, Wetlands Bureau, Shoreland Program (RSA Ch. 483-B, the Shoreland Water Quality Protection Act, establishes standards for development adjacent to the state's public water bodies as addressed under the NHDES Shoreland Permit Application);
- NH Department of Transportation (NHDOT) (RSA Ch. 236, 231 and 265 relative to regulation of the highway system, requires permits for utility crossings and use of NHDOT ROWs, including a Use and Occupancy Agreement, excavation (trench) permit, transportation of oversized loads, Turnpike Encroachment Agreement, and driveway permits); and
- NH Public Utilities Commission (NHPUC) (jurisdiction relative to crossings of public waters and lands under RSA 371:17 as addressed under the two NHPUC License Applications).

2. Other State Agencies

- NH Division of Historical Resources (NHDHR) (National Historic Preservation Act, 16 U.S.C. § 470 and RSA Ch. 227-C regarding cultural resource protection as addressed under the USACE's New Hampshire Programmatic General Permit);¹⁶
- NH Natural Heritage Bureau (NHNHB) (authority under RSA Ch. 217-A, the NH Native Plant Protection Act, to review impacts to state-listed rare, threatened, and endangered plant species as addressed under the NHDES Wetlands Permit Application);¹⁷
- NH Fish & Game Department (NHF&G) (authority under RSA Ch. 212-A, the NH Endangered Species Conservation Act, to review

¹⁶ The NH Division of Historical Resources Request for Project Review and correspondence with NH Division of Historical Resources is documented in Appendix 33.

¹⁷ NH Natural Heritage Bureau's data check results letter and correspondence with NH Natural Heritage Bureau is included in Appendix 37.

impacts to state-listed rare, threatened, and endangered wildlife species as addressed under the NHDES Wetlands Permit Application); and

- NH Department of Safety, Division of Fire Safety, State Fire Marshal (RSA Ch. 21-P:12 relative to the responsibilities of the State Fire Marshal, ensuring compliance with the NH State Fire Code and the NH State Building Code through the review of plans prior to construction).¹⁸

(2) Documentation that demonstrates compliance with the application requirements of all such agencies;

Documentation demonstrating compliance with the application requirements of the State and federal regulatory agencies listed in (d)(1) above has been included within the agency application forms and supporting documentation contained in the Appendices listed in the following Section (d)(3).

Applications for certain construction related approvals from State and federal agencies will be filed by contractors after: (1) the SEC site certificate and other approvals listed above are issued; (2) equipment is ordered; and (3) field work is ready to begin. These may include, if necessary:

- NHDOT Special Permit to move a load in excess of legal limit;
- NHDOT Driveway / Curb Certification;
- New Hampshire Department of Resources and Economic Development (NHDRED) Notice of Intent to Cut;
- NPDES Construction General Permit;
- NHDES approval of marshalling yards, laydown areas, and access roads;
- FAA Form 7460-1, Notice of Proposed Construction or Alteration;
- Blasting Permits; and
- United States Coast Guard Notice to Mariners.

(3) A copy of the completed application form for each such agency; and

Appendix 13: Joint NHDES/USACE Wetlands Permit Application

Appendix 14: NHDES Section 401 Water Quality Certification Request

Appendix 15: NHDES Shoreland Permit Application

Appendix 16: NHDES Alteration of Terrain Permit Application

Appendix 17: NH Department of Transportation Applications

¹⁸ The State Fire Marshal within the NH Department of Safety, Division of Fire Safety, was consulted and will not be participating in the Site Evaluation Committee Process. See Appendix 12 for documentation of consultation with the State Fire Marshal's office.

- Use and Occupancy Agreement(s)
- Aerial utility permit application(s)
- Excavation (trench) permit application(s)
- Turnpike encroachment agreement application(s)

Appendix 18: Request for the Site Evaluation Committee to Grant Approvals for Overhead Municipal Road Crossings and to Excavate in Municipal Roads

Appendix 19: NHPUC Water and Public Land Crossing License Applications

- Construct and Maintain Electric Lines, Neutral Wires and Fiber Optic Cable Over and Across The Oyster River and Pickering Brook and under Little Bay in the Towns of Durham and Newington, New Hampshire
- Construct and Maintain Electric Lines, Neutral Wire and Fiber Optic Cable at Three Locations Over and Across Public Lands Owned by the State of New Hampshire in the Town of Durham, New Hampshire

(4) Identification of any requests for waivers from the information requirements of any state agency or department having permitting or other regulatory authority whether or not such agency or department is represented on the committee.

The Applicant is requesting waivers from Alteration of Terrain Rule Env-Wq 1504.09 that specify the requirements to prepare a Stormwater Drainage Report, Drainage Area Plans and Hydrologic Soil Group Plans in support of an Alteration of Terrain Permit Application.¹⁹

The Applicant is also seeking partial waivers from SEC rule Site 301.03(c)(3)–(5) and Site 301.08(c)(2).

(e) Requirements for an energy facility, including an energy transmission pipeline, that is not an electric generating facility or an electric transmission line.

The Project is an electric transmission line; therefore, this section does not apply.

(f) If the application is for an electric generating facility, the application shall include the following information.

The Project is not an electric generating facility that is either a bulk power facility or a renewable energy facility; therefore, this section does not apply.

(g) If the application is for an electric transmission line or an electric generating facility with an associated electric transmission or distribution line, the application shall include the following information:

¹⁹ For additional information on the waiver request, please see NHDES Alteration of Terrain Permit Application, Appendix 16.